

Dear workshop participants:

Enclosed is a draft chapter from my current project tentatively titled 'When mercy seasons justice: pardons in the constitution of seventeenth-century England'. This book re-conceptualizes the royal prerogative of mercy as a problem of governance rather than primarily as a tool of law enforcement. I am arguing:

1. that early modern pardoning reflects broader understandings of power relations and therefore needs to be understood more specifically within that context than has been done. In seventeenth-century England, therefore pardons express the mysteries of salvation, the 'natural' hierarchies of favor and the complexities of daily government.
2. the time frame for the work is 1620-1680, turbulent decades in the history of England generally and a time when I argue the meaning of a royal pardon shifted from a personal gift of grace to a restricted power tied to the 'public' interest. The ad hoc solutions and improvisations through which that happened are part of the story that I want to tell.

This chapter is an exploration of the lessons that pardons were intended to teach and the problems inherent in that task. For fuller context, the current outline of the project works like this:

Part one is an overview of the contemporary meaning of pardoning:

1. The necessity of mercy—pardons as a lesson in the mystery of salvation
2. The qualities of mercy [this is the chapter you have]
3. Acts of favor—getting a pardon and the hidden hand of administration
4. The reasons why—special pardons to individuals

Part two tracks chronological change in examining three peculiar sorts of pardons:

5. Negotiating grace—general pardons, e.g. collective forgiveness of statutory violations in return for parliamentary subsidies, with an emphasis on the 1620s
6. The mercy of the people—circuit pardons for felons in return for labor, with an emphasis on the 1650s
7. The monarch and his men—pardons for officials impeached by parliaments, with an emphasis on the 1670s
8. Conclusion

I am looking forward to our meeting on the 18th and to the opportunity to refine my work through our discussion.

Best,

Cynthia

THE QUALITIES OF MERCY 1620-1680

In early modern England, the secular authority on the concept of pardon was Seneca, whose **De Clementia** had been written as a guide for his pupil, Nero.¹ The judicious use of mercy, Seneca advised, showed a prince's compassion for his people as well as his confidence in their love. Subjects expected, appreciated and resented other gifts depending on their status, but the need for mercy was universal. There is no man, Seneca insisted, 'so wholly satisfied with his own innocence as not to rejoice that mercy stands in sight...'² Pardons should not be given often or carelessly; but giving them was essential: it showed a ruler in control not only of his kingdom, but also of himself. To be able to spare another's life was the essence of superiority; to be willing to do so was the essence of self-restraint. Rulers who inflicted punishment at every opportunity seemed to fear their subjects, and ironically bred the very misbehavior that punishment was intended to suppress. 'Mercy, then, makes rulers not only more honored, but safer.' Seneca concluded that mercy is 'the glory of sovereign power and its surest protection.'³

Among the writers who took governance as their subject in the sixteenth and seventeenth centuries, it would be difficult to find any who did not accept and repeat Seneca's theme. The use of mercy was seen as a defining element of sovereignty. Sir Thomas Elyot counseled that 'Surely

nothing more entirely and fastly joins the hearts of subjects to their prince or sovereign than mercy or gentleness'. Machiavelli and Bodin both considered pardons so essential to dominion that they advised rulers only to delegate the power to grant mercy in extreme circumstances.⁴ Jurists also saw pardons as an essential prop of kingship. Sir John Dodderidge argued that 'God bestows upon princes three special precious gifts to enable and ennoble their government: power, justice, and mercy.'⁵ Sir Ferdinando Pulton considered pardoning one of the Crown's 'most ancient and honorable prerogatives.'⁶ The consensus was, as Charles I told a rebellious Parliament in 1643, 'The power to do, our justice to enforce and our mercy to pardon [are] three such inherent prerogatives that as without them we are no king.'⁷

Sir Edward Coke, in his **Institutes of the Laws of England**, began the chapter 'On Pardons' by quoting not legal antecedents, but Proverbs 20.28: 'by mercy is his throne strengthened'.⁸ His merger of secular and sacred points to a meaning of pardons that was distinct in early modern culture. The need for mercy in seventeenth-century England rested on a notion of synergy between governance and Christianity. Human sinfulness compelled the creation of laws and kings; human depravity guaranteed that the laws would be disobeyed; human obtuseness demanded the need for visible, repeated, severe punishments. The message of the

New Testament was that despite their shortcomings, humans could be forgiven; mercy was at the heart of God's promise to the Christian faithful. God sent Jesus, James VI/I wrote to his son, 'for satisfaction of his justice...that since we could not be saved by doing, we might at least be saved by believing.'⁹ But God's promise of mercy was for a time after death that was much discussed, but ultimately unknowable; in the human present, in the belief of most seventeenth-century commentators, disorder was inevitable, punishment was a needed inspiration to discipline, and pardoning was a valued reminder of the gift of salvation. The responsibility for both punishment and pardons fell logically to monarchs because their authority rested on their special position as God's vice regents. So in theory, the role for secular mercy was straightforward: it embodied and reinforced the idea that humans owed their destinies to an absolute power that both judged and loved them. Lethal disagreements about how God expressed that judgment and that love characterized the early modern centuries, but all confessions posited some emulative relation between God and king.¹⁰

Pardoning was a physical manifestation of that relationship. It embodied the power of sovereignty, proving that kings were *homo sacer*, individuals truly alone in their

powers over life and death.¹¹ A pardon from execution was a palpable preview of the Last Judgment; Francis Bacon spoke of pardons as acts that 'imitated' Christ. Royal pardons were about what the monarch could have done but did not do as much as about the plight of any petitioner. With minimal restrictions, sovereigns could pardon as they liked--before an offense had been committed or after, before it had been tried or after, to spare lives or property or both.¹² And like eternal salvation, pardons were acts of grace, not reparation. Pardoning demanded acceptance (at least titularly) of the pardoner's superiority: pardons could not (in theory) be earned, demanded, or expected.¹³ Early modern kings were not expected to use their power to pardon primarily to correct judicial wrongs or to reward rehabilitation. They pardoned to inspire men and women to obedience against their natural inclination to self-interest, to remind them of the horror of judgment and of the wonder of deliverance.¹⁴ That lesson and the blessings of redemption were the central inferences to be drawn from royal pardons.

Recent scholarship, my own included, has drawn attention to the disciplinary analogy between household and kingdom. It has become common to see the successful ruler in either venue in terms of dominion, someone expected to control weakness within him and so, charged with controlling weaknesses in others. Yet the discussion of mercy complicates this picture. The tensions of pardoning were

such that no prince could have navigated them unerringly.¹⁵ As we shall see below, what in 1620 represented (theoretically) royal privilege at its best: mercy distinct from arrogance, corruption and piteous compassion, also represented (practically) opportunities for pride, greed and manipulation. The ideal prince in terms of mercy was not one who overpowered temptation, but one who mixed surrender and resistance without succumbing permanently to either. I would argue that the royal patriarch's power implied not surer self-control but surer balance between unrelentingly centrifugal pressures.

Since the value of pardoning lay not simply in its individual consequences, but also in its more general didactic force, pardoning in the sixteenth and seventeenth centuries was both highly personal and highly social.¹⁶ On the one hand, the echo of divinity in pardoning made it intimately personal. Monarchs largely had the freedom to pardon as they chose. Judges, parliaments, and attorneys recognized that, as a species of royal property, where the monarch had an 'interest', he might be influenced, but could not be coerced.¹⁷ Pardoning was a prerogative in which the personal style of a monarch made a palpable difference. James I on occasion interrogated petitioners and sent officials for further information before allowing pardons. Charles I left investigating to legal officers, but did not hesitate to question their opinions. Cromwell was equally

willful, infuriating the Rump on several occasions by questioning their decisions.¹⁸ Charles II was sometimes engaged by issues of clemency, more often bored, and always, it seemed, open to influence.¹⁹

Yet the social uses of pardons meant that albeit a personal prerogative, they could never be completely idiosyncratic. Mercy bound princes to God and to their subjects. In the thirteenth century, the jurist Bracton had summarized it neatly when he wrote that a monarch used pardons so 'that by his merciful dealing with others, the God of Mercy may take commiseration upon him.'²⁰ Seventeenth-century monarchs understood that God would assess them in terms of their public actions as well as their private thoughts. Too strict justice was cruelty, unbecoming in a man; unseemly and ineffective in a ruler. Compassion divided a good king from a tyrant, and a sovereign from a subject. Subjects showed strength by avenging personal wrongs; princes, whose strength was obvious, showed majesty by not demanding vengeance. 'The man for whom vengeance is easy, by disregarding it, gains assured praise for clemency,' Seneca counseled Nero.²¹ 'Prefer the way of peace,' Charles I advised his son, 'show the greatness of your mind rather to conquer your enemies by pardoning than by punishing.'²² In a gentler mode than punishment itself, restraint still invoked what might have been; each pardon was intended to remind observers of not only mercy, but also punishment. The power to kill and the

power to save were complementary tools of kingship, just as the power to punish and the power to absolve were essential to the priesthood, and the power to discipline and the power to teach were essential to the householder.

Making pardoning visible helped re-enforce such lessons. K.J. Kesselring has revealed the myriad ways that giving pardons played into what she labeled 'an intensely theatrical political culture' of the Tudors.²³ Much of this stagecraft manipulated the promise of mercy like a plotted drama, emphasizing first the concentration of power in the monarch, then the dire circumstances of the condemned and lastly, the beneficence of pardon and the pardon-giver. The resulting dynamics of public drama were useful, if not always predictable.²⁴

The Stuarts and Cromwell staged their performances mostly for smaller audiences than had their predecessors.²⁵ They had fewer ceremonial entries and processions than had the Tudors, so some of the easiest opportunities for scripted intercessions eluded them. The absence of the sort of riots and rebellions withstood by the Tudors through most of the sixteenth century left the Stuarts less room for the sort of didactic set piece that Kesselring cites from the aftermath of the May Day riot in 1517: Henry VIII on a high platform; a teary-eyed Cardinal Wolsey acting the intermediary; four hundred criminals below rising from their knees as they hear the news of their deliverance, throwing the halters meant to hang them high into the air.²⁶ Nor did

the Stuarts take much advantage of the other dramatic possibilities of the scaffold. Crowds flocked to hangings, among other reasons, because they might see something startling: convicts might declare their innocence or nooses might break or the apparently dead might revive. But the surprise most to the advantage of the Crown was the arrival of a last minute pardon.²⁷ Such deliverances seem to have become exceedingly rare under the crowd-shy rulers of the seventeenth century.²⁸

Royal reticence could not, however, negate the public element inherent in English legal process. Mercy secreted from view seemed suspicious; as we shall see in later chapters, both the purpose and its legality of private pardoning came under public scrutiny. Mercy's legitimacy depended in part on its open declaration. Reprieves were granted in open court.²⁹ Petitions routinely passed through the hands of neighbors, patrons and several courtiers.³⁰ The monarch usually conferred with at least the Crown's attorneys and the Lord Chancellor; frequently he or she solicited the opinions of judges, councilors or local officials who knew the persons involved as well. Along the way, new parties from the Court or (less frequently) the county might join in or be recruited to help influence the decision one way or the other. Warrants and writs went back and forth from various clerical offices throughout the process. And the formalization of most pardons returned the process to its point of origin since most pardons had to be

pleaded in open court.³¹ Each plea involved a ritual: that could mean a simple declaration and assent or it could mean reading the full pardon aloud, swearing of sureties for future good behavior, and an elaborate declaration of contrition.³² Pardons of any sort were rare enough that few courts would have heard more than one or two in a sitting, but that meant that the impact of a pardon echoed the rhythm of executions--judgment punctuated occasionally by clemency.³³ The lesson was hard to miss. The catechism, bible and book of common prayer rehearsed regularly the miracle that was supposed to be ever present before the eyes of all good Christians: the promise of mercy instead of the deserved harshness of justice. The sermons preached at the beginning of each Assizes often specifically had justice and mercy as their theme.³⁴

News of pardons was also part of the 'buzz' from London. Administration in Stuart England involved too many hands to keep much of anything a secret and rumors of who might (or might not) receive royal mercy as well as comments on pardons already sealed were a staple of news from Court.³⁵ Family correspondents repeatedly reported such information³⁶ and for inveterate correspondents such as John Chamberlain, even relatively minor incidents were newsworthy. Controversial cases merited repeated updates. And pardons were shared commodities even for those who never came near Whitehall or Tyburn. If you read or had read to you penny pamphlets or newspapers, if you saw or heard theatrical

productions, if you believed in or knew miracle stories, you knew something about pardons.³⁷

Unlike the prescriptive literature, the more informal media mixed established ideas about the need for royal beneficence with skepticism about the wisdom of royal choices. Pardons gone wrong were always more compelling to discuss than pardons gone right. So although John Chamberlain conveyed the news about some pardons of which he approved, he spent more ink on doubtful acts of mercy whether the clemency was notorious, (such as the pardon given to the Earl of Somerset after his conviction for murder) or merely unwise (such as the much-pardoned Richard Nicols, a thief who continued to thieve and who, when finally hanged, 'in a sullen humor', declared himself a Catholic.)³⁸ The enormously popular genre of cheap crime pamphlets set tales of defiance and recidivism on the gallows alongside of stories of mercy and contrition.³⁹ Some early modern dramas staged pardons to stress the power of majesty, but others used them more ironically, exposing what the critic Janet Spencer calls the 'political realism' of the process, the 'gears and chains of the machine.'⁴⁰ It was the unpredictability of clemency, not its impact that mattered here. If the public accepted the theatricality of mercy, it was in part because it left them, as audience and critic, some measure of control. Mercy was a species of royal property yet its pervasiveness made pardons a sort of civic property as well.

The belief that royal freedom to pardon benefited the political and religious systems was complemented by an equally strong and troubling concern that pardons could easily destroy good order in both the commonwealth and the human soul. Coke considered the 'hope of pardons' to be one of the most important obstacles to civic peace because it encouraged people to gamble with the legal system. The pardoned and allegedly reformed pirate Henry Maynwaring said that his travels had taught him that the countries 'best governed' were those where the laws are most severely executed.'⁴¹ The early seventeenth century law student John Manningham observed in his diary that 'there is more encouragement taken by one that escapes the punishment due unto him by the law, than there is fear wrought by the execution of a hundred.'⁴² Stories of once-pardoned convicts returning to crime were commonplace, and the most pointed anecdotes blamed the monarch who offered pardon for the consequences of such later offenses. Lord Burghley believed that 'by mercy, [the Queen] has harmed herself more than [by] justice...'. A story repeated in an eighteenth-century treatise made the point succinctly: Charles II asked a courtier the state of the peace in London and was shocked to hear the news that he, the king, had robbed and murdered a man in the street the night before. The courier silenced royal protests by explaining that since a man whom the king had pardoned had done the deed, 'all the world lays this business on your majesty.'⁴³ Charles II got the point.

Monarchs who disregarded the fact that it was the scarcity as well as the availability of pardons that made grace assist rather than undermine the peace abdicated their duty to their subjects.

In addition to concerns about mercy's impact on law and order, there were unresolved ambiguities about the nature of pardons. No clear consensus existed about what a pardon actually forgave—penalties alone or the guilt from which the penalties arose as well? Neither the optimal relationship between sovereignty and parliament's right to counsel in pardoning nor the line between a pardon's cost and corruption were entirely clear. And while there was universal agreement that kings could pardon only where they had an 'interest', the boundaries of that concept were repeatedly contested.⁴⁴

So what typified a prince who used his prerogative of mercy wisely? Books of advice to princes contained numerous aphorisms on the subject, almost all of which emphasized the same qualities, which I am going to consider in term: selflessness, generosity, impartiality, and rationality. Kings were to use pardons to teach others not to protect or to enrich themselves. The paradigmatic example of such clemency, taken from **De Clementia** by numerous early modern didactic texts, was the story of the Emperor Augustus and Lucius Cinna.⁴⁵ Cinna was a traitor whom Augustus had spared and favored with office and riches. When an informer

revealed that Cinna was again plotting, the emperor changed tactics: realizing that if he executed Cinna, Cinna's allies would still be a threat, Augustus pardoned him instead.

'Let us put to the test which one of us acts in better faith,' Augustus challenged him in a private meeting, 'I in granting you your life or you in owing it to me.' Cinna repented, became a consul and eventually, Augustus' heir. The moral of the tale was both practical and philosophical. Augustus acted as a civic physician, not a civic taskmaster, putting the spiritual health of a subject before his own well-being. He took advice, but he listened primarily to his own conscience.⁴⁶ As Erasmus noted, 'out of respect for his own position he [a prince] will sometimes pardon an unworthy man and with a thought for his reputation will be lenient to those who deserve no clemency.'⁴⁷

Humility and selflessness were difficult to sustain given the trappings of early modern kingship and the routines of law enforcement. Early modern comparisons of God and prince were too standard to need much discussion here, but they were as commonplace in the rhetorical flourishes of pardon petitions and in assize sermons as they were in other media. Sir Walter Raleigh asked for his life by likening James VI/I to God in 'both his giving freely and in giving to such a one from whom there can be no retribution...a dead man'⁴⁸ In 1628, John Clavell expressed his thanks for a pardon through a poem likening the power of Charles I to the power of the 'king of kings' and dubbing

the Catholic Queen Henrietta Maria the 'great queen of mercy'.⁴⁹ A decade later, prisoners in Newgate asked the Prince of Wales to ask his father, Charles I, to 'hear your son for us all as God heard his son for all sinners.'⁵⁰ In the mid-1670s, John Taylor adapted a familiar liturgical style, setting his petition as an acrostic of the name of Charles II.⁵¹ Even in the 1650s, petitioners compared the power of Oliver Cromwell with that of a 'deity' who saw and heard everything in the kingdom.⁵²

Such drama was a necessary complement to mercy's lessons, but the fact that princes were God's chosen did not immunize them from the most persistent of human sins, pride. While it may seem nonsensical to separate arrogance and monarchy, the line between the arrogance integral in kingship and a darker, more damning sort that tempted all humans was thin, but real. Arrogance and selfishness defined tyranny. A good prince recognized at least the possibility that royal interests and those of the commonwealth might not be identical; such a monarch tried to separate public good from personal gain. Tyrants were unable either to recognize or to respect that distinction. Erasmus, among others, counseled young princes always to recall that their unjust acts (unlike those of ordinary men) could bring 'tribulation upon such vast numbers'⁵³

Any personal prerogative invited unchecked egotism and given the manifold possibilities for granting mercy, this was particularly so in pardoning. Circumstances in which a

royal pardon was obviously illegal were few; individual choices were virtually unchallengeable.⁵⁴ In the fourteenth century, parliaments had tried repeatedly to legislate against abuses born of the king's freedom in pardoning, but with limited success.⁵⁵ Richard II agreed to honor constraints only so far as 'his liberty and regality' would allow⁵⁶ and that did not prove to be very far. Richard and his successors could and repeatedly did include in pardons a 'non obstante' clause that gave preference to the royal will over any extant legislation.⁵⁷ In such circumstances, the temptation was considerable to use grace in ways that were questionably legal, or legal but offensive.

Princes might reasonably limit the personal liability of public servants (especially those handling finances) or exempt specific individuals from statutory penalties and the rationales for such protection were all too easy to expand.⁵⁸ All three of the kings under study here tried to use pardons to spare officials from parliamentary scrutiny; only dissolutions stopped or slowed proceedings against The Duke of Buckingham in the 1620s, the Earl of Clarendon in the 1660s, and the Earl of Danby in the 1670s.⁵⁹ All three monarchs were chastised as well for granting extraordinarily broad pardons to their favorites, so broad that at least one Chancellor allegedly protested that he dared not pass them unless the king gave him a pardon for his action.⁶⁰

Even the years without a king produced situations in which the scope of pardons broadened at the will of the

executive. Cromwell made routine the practice of pardoning prisoners to transport them overseas as laborers despite the fact that Magna Carta ensured that no free English subjects be compelled to leave the realm against their will 'except by lawful judgement.' Transportation, as Cromwell used it, was not a sentence, but the terms of a sentence's remission. The constitutional point was murky enough that some judges noted explicitly when prisoners consented to their exile and complaints about coercion were plausible enough that on at least one occasion a ship returned to port rather than risk transporting pardoned convicts illegally.⁶¹

Gerald Aylmer believed that Lord Chancellors and Keepers had 'a genuine if rarely used suspensive veto, over pardons, but while that might buy time for persuasion, it was extremely difficult to prevent a king determined to pardon from doing so.'⁶² Governing with agreement was always preferable, but the Stuarts had to contend with the contradictory pressures of a convention that favored restraint in pardoning and a governmental structure that favored using pardons to recruit ministers and conduct foreign policy. The constitutional undertow here was real: neither the lines of ministerial responsibility nor the status of transportation nor the limits of safe religious practice were clear.⁶³ In hindsight, the conflicting structural demands are clear as well, but to contemporaries, extensions of clemency were hubris, not statecraft.

Arrogance was not only a danger in itself, but also for the further sins that it encouraged. The most problematic and persistent arena in which the Stuart kings tried to expand their use of clemency, however, had less to do with selfishness per se than with generosity. On the one hand, the Stuarts repeatedly considered ways to ease the burden of Catholics punished for violating penal statutes. Elizabethan legislation, as well as increasing financial penalties for not participating in the Church of England, had made all Catholic priests in England into felons.⁶⁴ In an age of confessional anxiety, clemency to Catholics encouraged fears of royal apostasy, foreign influence, and the insidiousness nature of popery.⁶⁵ It also suggested an attitude towards mercy increasingly associated by the godly sort with the deceptiveness reassurances of the Catholic sacrament of confession. The Stuart kings, moreover, all had Catholic wives, Catholic officials, and Catholic allies; their position in European politics was less straight forward than the godly would have liked. In such circumstances, any extension of mercy to Catholics outside of the royal and diplomatic households (and often even inside) was likely to be seen as dangerously charitable.

As recent scholarship has made clear in other contexts, doubts about religious loyalty haunted Stuart politics. There were rumors in the mid-1620s about a broad pardon to Catholics from James VI/I if Spain were willing to marry the Infanta to Prince Charles. James I never offered his broad

amnesty, but the later successful French marriage negotiations contained an expanded toleration for Catholics.⁶⁶ Caroline parliaments struggled repeatedly with the king's alleged tenderness towards Catholics: parliaments in 1625, 1626 and 1628 heard protests against pardons to papists. Charles I found no peaceful way to resolve his disagreement with the Houses and the Long Parliament, in its first spring session, used the King's reprieve of a priest named Goodman as evidence of the political distance between the Commons and the Court.⁶⁷ Charles II offered fewer specific pardons to Catholics, but his desire to immunize all non-conformists with declarations of indulgence drew accusations that he was virtually suspending legitimate legislation.⁶⁸ Such persistence was among the reasons why Lord Keeper Guilford considered the Stuart efforts to get around restrictions on their mercy as 'popish' artifacts.⁶⁹

On the other hand, while seeming too generous to Catholics, the Stuarts seemed tightfisted when it came to general pardons, the pardons that mattered to a large and generally law-abiding segment of the population. The Tudor parliaments had overseen an unprecedented rise in what Hayward Townshend in 1601 called 'penal and entrapping laws.' More than one hundred penal statutes were in force early in the reign of James I, and the result was that more people and especially more of the 'middling' and 'better' sorts found themselves (whether intentionally or not) acting against the law.⁷⁰ Some of these acts concerned felonies,

but more addressed the quotidian tensions of communal (and particularly economic) life and concerned transgressions that carried financial rather than corporal penalties. Although neither of the early Stuart kings seemed keen to add significantly to this body of statutes, their governments were as interested in enforcing what had already been enacted as their subjects were in seeking periodic relief from such enforcement.

The early Stuart monarchs were reluctant to grant such pardons, and when they did, reluctant to cast them broadly. James VI/I granted three such pardons; his son none at all.⁷¹ In part this reflected the fact that early seventeenth century parliaments were equally stingy about granting subsidies to the Crown, but that was not the only issue. The general pardon in 1621 foundered in part over how much old debt should be forgiven; in 1628 and 1629 (in addition to the king's desire to protect his favorites) pardons died over the king's unwillingness to forgive either penalties or feudal obligations that produced large revenues. James VI/I understood the value of appearing generous. In 1621, he offered to let a pardon pass without a completed grant of the subsidy. In 1624, clearly having in mind the failures of 1621, he had the Lord Keeper open parliament by assuring the members that as 32 Henry VIII was remembered as the learned parliament, 39 Elizabeth I as the devout parliament, and 19 James I as the gracious parliament, the current meeting would be the bountiful parliament in honor of 'that

large pardon you expect this time.'⁷² ⁷³ Charles I was less accommodating. 'Too large to the faultiest, too straight to the more innocent, and so it lies dead,' was the verdict of newsletter writer Joseph Mead about the rejected pardon of 1628.

Among the most grievous sins that could befall the magistrate was corruption, a sin that destroyed both the giver's soul and the healthy order of the commonwealth. One of the clearest proofs of purity was impartiality and this meant not only being impartial, but seeming so as well. Impartiality was requisite in a magistrate of any rank; favoritism was inimical to the very definition of justice. 'To punish evil doers as God has ordained, cherish and protect those that do well,' a Protectorate preacher reiterated. 'This is the end of magistracy.'⁷⁴ In the **Basilikon Doron**, King James assured his son that 'the most part of your people will ever naturally favor justice; provided always, that you do it only for love of justice, and not for satisfying of any particular passions of yours....Justice should be blind and friendless: it is not there you should reward your friends, or seek to cross your enemies.'⁷⁵

To be impartial in early modern terms did not mean blindness to qualities such as status or gender; it did not mean recusal from cases where one knew the parties; it did not necessarily even mean refusing all gifts and gratuities.

Impartiality meant disinterest, a willingness when called for to rule against the powerful and to decide against what was popular. The blindness of royal justice was the ability to assess actions fairly while also seeing fully to the demands of rank, gender and circumstance.

Favoritism encouraged the advantaged to feel above the law and the less fortunate to doubt the king's ability or interest in properly defending them. It undermined trust in the courts and encouraged further attempts at corruption. And it betrayed the basic rationale for secular trial and punishment, the claim that the king's peace was a surer guard against disorder than was any form of private vengeance.

Partiality lured via many paths and in many guises, but among the most powerful of these was greed. Rumor supported the view that pardons were always available to those who could afford them. News writers reported that that the Bishop of Lincoln paid 8000li for a pardon against contempt in 1640, and that friends of Lord William Russell offered Charles II (unsuccessfully, but with impunity) 50,000li to spare Russell from execution for treason in 1681.⁷⁶ Reports of less spectacular sums for less exalted pardon recipients were also available: in 1623, for example, William Whiteway wrote in his diary about a Squire Williams, who, having fled to Europe for eight months after stabbing a local tapster, received his pardon for 1500li.⁷⁷ Some payments were less direct, but no less obvious. In 1612, Sir Robert Dudley

sold his estate at Kenilworth to Prince Henry for 15,000li. Since the estate had recently been valued at 38,000li and Dudley had long-standing legal difficulties, according to Simon Adams, he was 'effectively' buying his pardon through the land transfer.⁷⁸ The circulation of such stories, true or not, suggested an insidious pattern.⁷⁹

Bacon, in his **History of the Reign of King Henry VII** wrote that 'the less blood he [Henry] drew, the more he took of treasure. And, as some construed it, he was the more sparing in the one, that he might be the more pressing in the other...'⁸⁰ In the 1620s, when he wrote this, there were suspicions of a similar dynamic, associated now with economic regulations rather than with treason. Despite some spectacular exceptions, the issue of partiality in pardoning was less about pardons bought and sold per se than about how easily pardons fit into an exchange culture that pervaded early modern life. Special pardons, those granted to individuals for specific crimes, were often gifts of favor for the procurer. General pardons, those forgiving minor crimes for anyone who pleaded them, were increasingly used as bargaining chips in negotiations over parliamentary subsidies. Circuit pardons, those offered to poor felons en masse, originated in and prospered from the Crown's recognition that the condemned were a labor resource. 'Your mercy is merchandise and great men trade in it,' one critic admonished James VI.⁸¹ The fairer comment might be that this made mercy typical, not exceptional.

Practically, making the exchange seem equitable was the best for which one could hope. Ideologically, the dilemma was thornier: how could something that worked through concepts so familiarly economic effectively stand in for the unique and free gift of salvation? The notion that pardons could be bought, moreover, fed into lingering fears of spiritual as well as civil corruptibility. The selling of papal indulgences had been among the key proofs for Evangelicals of the unworthiness of the Roman Catholic Church in the sixteenth century; anything that looked like the selling of grace still had that resonance. The myriad ways in which pardoning and finance intertwined certainly made the process of receiving a pardon, if not the actual decision to grant clemency, a form of commerce.

All pardons were currency in the flow of patronage. They allowed local worthies to show, if not their intimacy with, than their influence upon the sovereign (or at least with his or her legal officers). But intermediaries put themselves between petitioners and the monarch, an interposition that while practical, undercut the monarch's position as the sole source of bounty. James VI/I decried the use of intermediaries in pardoning as a holdover from Catholic practice, yet the reliance of all of the first three Stuarts on those around them to be 'sweet conduits of mercy' was notorious.⁸² The Stuarts happily delegated substantial amounts of business, and since many of the most

successful intermediaries were often actual or alleged Catholics, this was bound to be unpopular.

Chapter 4 will examine the problematic relationship between subsidies and general pardons in greater detail, but at several points in James' reign, privy councilors seriously investigated the possibilities of selling such pardons outright.⁸³ In 1616, a highly skeptical John Chamberlain reported that the author of one such scheme predicted it could earn 400,000li in profit for the government. While Chamberlain himself considered this 'idle dreams', he thought the privy council might well believe it. 'I hear Pope Hackwell's pardons are in great forwardness,' he sarcastically wrote, 'and that within a few days we shall have a proclamation about them...'⁸⁴ That did not happen, but as late as 1622, Joseph Meade reported rumors that a pardon sale was still possible.⁸⁵

The dissonance between traditional economic regulations and the needs of an increasingly commercialized economy also set pardoning in a questionable relationship to bounty and impartiality. Particularly troubling was the way that pardons could be exploited by farmers, commissioners and informers for both royal and private advantage. Pardons for minor transgressions, especially those concerning land transfers, functioned as de facto licenses, the means through which both new and old practices could survive. Systematically enforcing laws for profit rather than for their substantive purpose dated back at least as far as

Henry VII and, so, too, did its unpopularity.⁸⁶ A sample of revenues earned between 1610 and 1614 suggests that the farm of pardons for alienating land without a license brought significantly more money into the hanaper than did any other sort of clemency.⁸⁷ Later in the decade, the privy council considered the profit potential in dispensing with the enforcement of penal laws. Chamberlain reported in August 1623 that James VI/I would offer papists pardons for past violations and a dispensation to practice Catholicism in their own houses for '5 and 20 shillings or 4 nobles a piece.' A month later, he named a commission to explore the idea.⁸⁸

Under James VI/I and Charles I, private individuals, not the government, often controlled such dispensations: for a price, they organized the enforcement, made the discretionary choices, and collected the profits that eventually reached the monarch. Such delegation offered huge temptations for unscrupulous informers and greedy commissioners. Fury against their profiteering is reflected in both the Commons insistence that Sir Stephen Proctor (a collector of fines due for violating the penal laws) be excepted from the general pardon of 1610 and the fury of the members against Sir Giles Mompesson (a collector of fines due for violations of various trading practices) in 1621.⁸⁹ From the beginning of James' reign on into the 1630s, there were repeated but only partially successful attempts to limit the hand over of such assignments.⁹⁰

Like all administrative instruments in the fee-bound structure of early modern bureaucracy, pardons were also a steady source of income for various petty officials.⁹¹ The numerous hands through which a pardon had to pass meant fees for clerks in the signet, privy seal and patent offices.⁹² In the 1630s, the fees for enrollments alone ranged from several to twenty shillings per skin of parchment used.⁹³ Hundreds of pardons passed through the seals process each year.⁹⁴ The clerks were vigilant about any change that might affect their incomes: they won the right to collect fees even in instances where immediate warrants spared the clerk of the signet and privy seal from actually sealing anything, and they protested bitterly when first the 'englishing' of documents and then the use of printed forms reduced their earnings.⁹⁵ That the clerks also expected gratuities made the process more costly and less predictable for anyone seeking a pardon. In 1613, two London merchants claimed to have spent 340li in quest of a pardon for a convicted pirate; the Earl of Cork in 1641 recorded spending 200li apart from fees to secure a pardon for one of his tenants.⁹⁶ Such monies typically went to officials such as the secretaries of state and the legal officers as well as to the various undersecretaries, doorkeepers, and purse holders who might help to expedite or delay the process.⁹⁷ Even general pardons could be private windfalls: John Aubrey reported that Sir Edward Coke made more than 100,000li from

the 1603 coronation pardon by charging 5li attorney's fees and encouraging 'every man of estate to sue-out a pardon.'⁹⁸

Pardons provided 'trade' not just in money, but also in realty and offices. Sparing a convict's life did not necessarily mean returning all of his property, so a vigorous secondary market in grants of forfeits fed off the residue of pardons. Potential benefactors could and did argue, in fact, that while restoring life was a gift, restoring property might be an unnecessary and perhaps dangerous reward to someone guilty of a felony.⁹⁹ The competition within the gentry for land and favor in seventeenth-century England was intense enough that negotiations for forfeited estates could begin before a pardon had been given, and in extreme cases, before there was either a conviction or even an indictment. Sir John Reresby, for example, spent years trying to convince people that he had not killed his body servant. In asking for a pardon, he alleged that the rumors began, not because of any evidence of foul play (indeed he had the body exhumed twice to prove his point), but because a local rival hoped to see him indicted and convicted in order to claim his property.¹⁰⁰ Reresby's dilemma was unusual, but not unique. In 1616, one Eustace Hart asked for a pardon as an answer to 'needy and malicious persons' who wanted to convict him of adultery in order to make an 'unlawful gain.'¹⁰¹ More chilling, Sir Dudley North reported that in late seventeenth-century Bristol, the alderman and justices of the city used

regularly to 'carry over criminals [to remand them back to jail] who were pardoned with the condition of transportation and to sell them for money.'¹⁰²

Justice was a business of the head rather than the heart and as a reasonable tool of governance mercy ideally should be more rational than sentimental. The root of mercy was empathy, the awareness, as Elyot wrote in his advice to governors, 'in what peril they themselves be in daily if in God were not abundance of mercy...'¹⁰³ Good kings acted out of kindness to those who seemed ready to repent and out of sadness at the necessity of having to execute incorrigibles. They responded to the need for mercy as reassurance, to the utility of mercy as inspiration, to the value of mercy as curative. But they did not confuse mercy with compassion or its companion, pity.¹⁰⁴

Judging with calm and reason was particularly important because the emotionalism upon which pity preyed was decidedly non-monarchical and unmanly. Elyot is worth quoting on this point at length:

And if you ask me what mercy is, it is a temperance of the mind of him that has power to be avenged, and it is called in latin clementia, and is always joined with reason. For he that for every little occasion is moved with compassion, and beholding a man punished condignly for his offence laments or wails, is called piteous, which is a sickness of the mind...¹⁰⁵

Passion, warned the Puritan preacher Thomas Scot a century later, 'is an evil guide in the execution of justice...'¹⁰⁶ Even in a monarch, passion could too easily descend into 'foolish pity' which enervated will and blinded conscience.

Seneca reserved his highest praise for rulers who acted out of calm self-assurance. 'Pity,' he wrote, 'regards the plight of the petitioner, not the cause of that plight; mercy is combined with reason.'

Reason restrained the instability intrinsic in a gift with emotional power. Such restraint was needed because, while God had the capacity to be tender without being weak, most humans, even monarchs, did not. We use terms of emotion to speak of God, the Elizabeth Archbishop Richard Hooker explained, but that is only for lack of proper terms: 'anger and mercy are in us passions, but in him, not so.'¹⁰⁷ God dealt out punishments and clemency with a disinterest that writers admonished princes to emulate. Bacon wrote approvingly of the unfathomable nature of the pardons granted to rebels by Henry VII; an elegy for James VI/I praised the fact that despite a natural inclination for mercy 'Yet truth and justice kept the balance even'; the Earl of Clarendon similarly lauded how Charles I, once schooled, accepted the public value of condign punishment.¹⁰⁸ In the late 1660s, when many subjects became disenchanted with Charles II, they explained his mistakes by claiming that years in exile had taught him too much about 'how to pity'.¹⁰⁹

In the biological logic of the early modern world, emotionality was effeminate, and like all things considered womanish, a sign of pliability and dependence. Thomas Scott warned the Jacobean Court against the dangers of 'an

effeminate disposition of the mind'; an anonymous writer about the same time associated 'womanish lenity' and vice.¹¹⁰ If one trusted contemporary stereotypes, female weakness deprived a prince of the ability to distinguish between petitioners for clemency. Yet, ironically, the association of women and mercy had a long tradition which assured a prominent role for women, if not womanishness, in the giving of pardons. The Virgin Mary was the paradigmatic intercessor for mercy; in post-reformation England, Queen Esther, who in the Old Testament saved the Jewish people by pleading for them with her husband King Ahshuarus joined her as an exemplar of female tenderness.¹¹¹

The ideal prince valued female petitioners but remained inscrutable: women were a reminder of the obligation to be merciful, not arbiters in such decisions. Official papers often acknowledge wives or mothers as petitioners for mercy (and/or for remission of legal fees) for male relatives.¹¹² Convicts frequently sought the intercession of the early Stuart queens and the various mistresses of Charles II, and on occasion condemned felons found their causes forwarded by such women.¹¹³ The pardoned highway robber John Clavell referred in print to Henrietta Maria as his 'queen of mercy'; a Henrician pamphlet re-published under both Elizabeth and James credited Katherine of Aragon with convincing Henry VIII to free two thousand apprentices after the May Day riot of 1517.¹¹⁴

The most famous story in this vein is a medieval one that bears repeating because it shows the interdependence of appropriate female and male behavior.¹¹⁵ According to Jean Froissart's chronicle of the hundred years war, when Edward III met unexpectedly strong resistance from Calais, he decided to execute six of the town's burghers in compensation for the English lives lost taking the city. He rejected every plea for mercy until his very pregnant wife, Philippa of Hainault, begged him to reconsider. Moved by her, he pardoned the burghers.¹¹⁶ As the literary critic Paul Strohm has pointed out, the story reveals more than the power of female compassion; it also shows how assigned gender roles allowed the king to appear both just and merciful. Edward was willing to be severe, so willing in fact that his manly severity was leading him close to a breach of the rules of war; Philippa's womanly tenderness offered him an excuse for moderation. The voice of mercy was effectively close to the monarch, but not so close it could be confused with his own.¹¹⁷ While it is easy to identify maleness with men and femininity with women, neither sex was immune to the vulnerabilities of the other. Queen Elizabeth was famously sparing in giving and James VI/I far more eager for popularity, not only in England, but also in Scotland.¹¹⁸ He lamented that in his first kingdom, 'I thought (by being gracious at the beginning), to win all men's hearts to a loving and willing obedience. I by the contrary found, the disorder of the country and the loss of my thanks to be all

my reward.'¹¹⁹ The two qualities--compassion and reason--had to be kept separate lest mercy become 'cruel mercy', compassion that encouraged the incorrigible, undermined the resolute, and threatened belief in law, prince, and God.¹²⁰

In ancient Thebes, sculptors represented magistrates as seated, handless and sightless. Their posture showed them as stable rather than emotional, their missing limbs demonstrated their immunity from bribery, and their blindness illustrated their ability to distance themselves from personal attachments.¹²¹ In seventeenth-century England, none of these bans could be absolute: in small portion, each was integral to the structures of early modern governance and economic life. The sign of God's grace to a prince as it involved the prerogative of mercy was the ability to turn such flaws into strengths through moderation; to express confidence without tyranny, sovereignty without venality, and generosity without effeminacy.

The Stuarts inherited a prerogative of mixed reputation, one valued when used prudently, but also feared as a potential means of disorder and corruption. Unfortunately for them, they inherited it at a time when strains on the mechanisms of government made pardoning increasingly important and increasingly open to close scrutiny. Nothing inevitable determined that the balancing act of centuries would change, but by 1680, it had done so.

After decades of complaint, pardoning had been stripped of many of its grander connotations, its opportunities for profit, and its freedom. Could the Stuarts have prevented such a change in direction? It is impossible to say. We will see below how the meaning and utility of various sorts of pardons changed, but what matters here is that pardoning became entangled in broader changes that ultimately effected the very definition of prerogative.

¹ Cite editions available-Lodge 1614; L'estrage, 1653 on are the most important, but my cites come from Loeb edition

² P363 i.9

³ p391 11.4

⁴ Elyot, I, pp. 79-80; Bodin, I,c 10,73-5. Among texts worth noting might be Leviathan, Grevilles Treatise of Monarchy, Harrington?; Newcastle's Advice

⁵ BL Harl Ms 5220/9v

⁶ Pulton, 1609 in De Pace Regis et Regni f;218, classical eng legal texts edition

⁷ Kelsey, p.93-he is reacting to the houses creating their own seal

⁸ Coke, 3rd Inst, ch. 55. The only non-English sources in the entire chapter are Seneca and the bible-not only Proverbs, but also Genesis, Eccles, Numbers and Deut.-NB only the Old Testament

⁹ Basilikon Doron, 14

¹⁰ see below for how this had more specific and contingent impact

¹¹ cite C/C essay on roman murder law; George Agamben- check that this is his phrase and that this is its proper use; NB that this had to be legislated under Henry8-does that need explaining or just a cite to KK?

¹² Restrictions vs appeals, nuisance, informers fees etc

¹³ Exception is in some homicide and even there there is a tension

¹⁴ Petitions for pardon might mention weak evidence, but as scholarly studies have consistently shown, the central issue was incorrigibility; nb modern comment on mercy as beyond legal rights from Ld Diplock

¹⁵ DOESN'T THIS GO VS MUCH CONTEMPORARY IMAGERY, EG DIFFERENT BODY PARTS EACH W/ DIFF TASKS; SOV/SUBJ ARE CLEAN DIFFERENT THINGS AND SO ON?

¹⁶ Richards on access; examples re immediate seal issues

¹⁷ See next chapter on how process complicated this a bit

¹⁸ need to explain that Parliament, not OC was the sovereign?

¹⁹ James intervention-GUNTHER CASE & OTHERS?; CHAS % OF IMMEDIATE WARRANTS VS OTHERS? CHAS2 QUOTE FROM NOTES/CHARACTER BY HYDE. CF INTERVENTION AS WELL OF CROMWELL-ANY CHANCE FOR PUBLIC COMMENTS ON EACH

OF THEIR MERCY STYLES? See also Judith Richards on impact of early Stuart styles

²⁰ cited in Pulton, f.118 [1609] GET ORIGINAL REF-NB Gerald Ford's similar rationale on pardoning Richard Nixon

²¹ on mercy, loeb, pp. 381ff; quote from p.377

²² last counsel of a martyred king

²³ KK, c5 esp; quote from p. 136

²⁴ on unpredictable, see Lake/Questier on Catholic executions; Laqueur on executions from a different angle; Linebaugh on later executions; anything from Hay? WHAT'S THE EVIDENCE FOR SERVICABLE-JUST COMMON SENSE?

²⁵ TRUE OF CHAS2? CROMWELL?

²⁶ pp 160 for the description, 157-60 for the full story

²⁷ bellamy, 189-90; kk 143-5 [143-56 on performance]; sharpe, jud pun.; davis on gallow miracles

²⁸ This is so even though it was a surrogate rather than the monarch who was exposed to the crowd in such circumstances. BUT ADD EXCEPTION OF GREY/MARKAHM/COBHAM IN 1603; AND BE SURE IT IS EXCEPTIONAL; WHAT HAPPENS RE RIOTERS 1607 OR 1630S? cf kk, 143-4,151,154-7 and my sample: 2 examples-1619 Taverner case noted in chamberlain ii,1; 1627 case noted by Mead /238.

²⁹ next chapter on how to get a pardon, but MAKE SURE THIS IS TRUE AND THAT IT ISN'T DONE POST-ADJOURNMENT

³⁰ Edie, Popular, p.369-70; on process, once again see kk, 119ff

³¹ general pardons only needed to be displayed if there were exceptions in the text; you had to show you were not one of those so named. DOUBLECHECK-OTHER GEN PARDONS/PARL ONES DON'T NEED A PLEA?

³² CHECK THIS AGAINST JSC OR BAKER, esp on points of timing and process. Aren't there also gifts for the judges involved? On reading the pardon, see laymans lawyer, pp187-9.

³³ On numbers and local unfamiliarity with the process, see next chapter

³⁴ CHECK JSC ON ISSUES OF TIMING HERE; ref my work on sermons and thank Eric for offering me new examples. ON WEEKLY SERMONS FIND OUT HOW WEEKLY READINGS WORK AND IF THEY HAVE ANY FLASH POINTS-ASK MALTYBY? Did QS or Newgate have sermons?

³⁵ Mead, Chamberlain, Williamson etc.DOES THE GAZETTE PUBLISH PARDON INFO?

³⁶ Barrington; gawdy-verny?

³⁷ Lake, Shuger, Darnton FIND MORE

³⁸ Both from Chamberlain, 1619-IS HE SUI GENERIS?

³⁹ True, but how can one evidence it?

⁴⁰ Spencer, 'Staging pardon scenes' quote from p58 though I don't agree with her more Foucaultian arguments; see also Richard Wilson, 'The quality of mercy'. Both focus on Shakespeare, but note similar tendencies in Beaumont and Fletcher as well as Jonson.

⁴¹ Maynwaring, 41; Coke, 3rd, c 105

⁴² diary, 190, 1602

⁴³ Elizabeth, Somerset bio, 259 [altered quote] James in BD, p.20; Chas 2 story cited in Madan, p.85n. ID KILLIGREW-IS S/HE A COURTIER.

⁴⁴ ?need summary?

⁴⁵ Cinna story pp. 381-7 [quote from 387], 9.1-9; Morison vs sedition 125ff; cotton /23v. Cinna did reform; elyot, pp. 74-8; Erasmus [born], p.232-3

⁴⁶ surprisingly here, from Livia who is the one to suggest clemency

⁴⁷ [born],232-is this DE on Cinna or just generally?

⁴⁸ C115/m24 #7750

⁴⁹ FIND REF

⁵⁰ FIND REF

⁵¹ GET REF

⁵² bl egerton 2549/20-1, nb this is a 1657 petition from a former royalist

⁵³ 175 in Born edition; check Jardine?

⁵⁴ Kings could not pardon where doing so prevented a subject's private satisfaction, e.g. in private suits, in criminal appeals, or where informers were due compensation. By the seventeenth century, none of these circumstances were frequent

⁵⁵ 1309,1311,1328,1336,1340,1347,1353,1390,1393

⁵⁶ Hunard, 311-17, 323-26; quote is from 13 R2,2c1. The lack of accountability for granting pardons also raised the possibility that monarchs might pardon murderers based on tainted counsel, but this is indistinguishable from the way one would criticize the kings choices since 'the king could do no wrong'

⁵⁷ NB what exactly the clause is used to overcome—pardons or sureties? The full clause in English reads 'not withstanding any other statute, act, or ordinance to the contrary.' The exact scope of the exemption was, not surprisingly, a source of controversy.

⁵⁸ on minor officials, see next ch: examples are feodaries, ambassadors, etc

⁵⁹ CHECK THE SITUATION RE LAUD; does Strafford fit in here too? GET OTHER examples of dissolution to stop impeachments [if they exist]-on what grounds is the pardon ignored and doesn't that set the limit for Danby?

⁶⁰ Chamberlain, ii, 309 in 1620 GET OTHER REFS AND MORE ON THIS STORY; see also situations re Middlesex and Lauderdale

⁶¹ ARE THERE COMPLAINTS ABOUT APPROVERS? clause 39 MC; ## and examples; did parliament solved this via legislation in 1717? Case law? : GET DETAILS HERE RE CONTRACTOR TURN AROUND AND PRIVY COUNCIL CONSIDERATION

⁶² Kings servants, 17

⁶³ legislation does most of the clarifying-act of settlement, transportation act, act of toleration [check provisions re priests]

⁶⁴ statute refs and check specific clauses

⁶⁵ priests working in foreign embassies or royal households were immune from the laws

⁶⁶ What sort OF CONCESSIONS CAME WITH THE FRENCH MARRIAGE?

⁶⁷ Russell, 153-4,204-6,229-80,239,246-7,263-4,297,380 [parl/pols]; wedgewood, stradfford, 41-2,374,379n43; d'ewes corres, ii,262; Birch,1, 442,454,337-9;2,366-7.

⁶⁸ Discuss the distinction between indulgence and pardon; DID HE NEVER PARDON JAMES?

⁶⁹ BL Add 32518/8

⁷⁰ Townshend as quoted in M.W. Beresford, 'The common informer, the penal statutes and economic regulation,' *EHR*, 2nd ser, x (1957-58), 223 of 221-37. Elton, *Parliament of England*, 385-88 and Dean, *Law-making*, 291-94 list the Elizabethan contribution to this corpus. For their impact, see, for example, C.J.Kitching, 'The quest for concealed lands in the reign of Elizabeth I' *TRHS*, 5th ser 1974), 63-78; D.R. Liddington, 'Parliament and the enforcement of the penal statutes: the history of the act 'in restraint of common promoters,' *PH*, viii, pt.2 (1989), 309-28.

⁷¹ only early Stuarts matter here because legislation voided a lot of the most archaic legislation in the 1640s and 1650s.

⁷² Foster, *Lords*, 198-99; His Majesty's Declaration' in *Political*

writings of James VI/I, 264; John Hacket, *Scrinia Reserata* (1693), 177-

79.

⁷³

⁷⁴ RParr, 1658, p11 but add other refs

⁷⁵ BD, p20-21

⁷⁶ Chamberlain, ii,559 on Cranfield; Dering accts, p145 [1683]; FIND REF TO CHAS JOKING ABOUT THIS

⁷⁷ egerton ms 784/p68; see also Dietz, 210-2; bl add 35331/75v; there is a 7/24 pardon for a john Williams for killing

⁷⁸ ODNB, citing Hawarde and Adams essay in Archives 22 on the case. Unfortunately Henry died before the transfer or the pardon was finished and Dudley was out of luck. BUT DIDN'T JAMES GET KENILWORTH AND IF SO, HOW? SEE ADAMS BOOK ON LEICESTER? Similarly, the Earl of Middlesex found his pardon facilitated by the conveyance of his home in Chelsea; Dietz, 210-2

⁷⁹ This @ might be better in chapter on process

⁸⁰ History, 213

⁸¹ Balaams ass

⁸² Cite on James' statement; evidence from procurer files? hoskyns on bucks, cited in lockyer; reeresby examples for chas 2?; one can infer this by the frequency with which members of the bedchamber appear as procurers for pardons # EVIDENCE?

⁸³ 1610 [see heh notes] and 1619 [bl add 32324 'the means to subsist']

⁸⁴ Chamb 1615 [23 feb], I, 581 CHECK THIS ISN'T 1615/6. pardons at 5li; JC thinks the 1603 pardon didn't earn 1/20 of that; by the next week [p584] he thought them less likely since their profit potential seemed negligible

⁸⁵ harl 389/199, 31 may 1622-pardons for 20 nobles, maybe 3 sorts and prices

⁸⁶ McGlynn takes it back even further, although she sees Henry's reign as a moment of real increase; McGlynn, pp. 27, 59-60, 218, 239; Bacon, Henry VII, 213

⁸⁷ E351- pardons total each year between 185 and 212li; the farm could add as much as another 500li. BUT ISN'T THIS GOVNT MONEY NOT PRIVATE

⁸⁸ Chamberlain, ii, 513 30 aug; c231/4/315 on 8 sept for 5 years, but the commission makes no mention of money-WOULD THAT BE RECORDED AND IF SO WHERE?; PC ref= from Jardine/Stewart 446-7

⁸⁹ Parliament debates

⁹⁰ MAYBE EARLIER AS WELL? Eng patents, 12-13, 1604 opinion to the lords vs granting away of prosecution of penal stats [eng patents appendix m]. stat monopolies [app a]; 1621 proc revoking commission including ones to pardon apprenticeship, arable conversions [app p], 1629 app r, CHECK W/ DAVID SACKS ON THIS?

⁹¹ ##s?

⁹² add 46500/92 bill for gourdon's pardon in the 1650s; m-1 for other examples from charter bills

⁹³ Specifics are hard to see, but 1635 fees for clerk of hanaper passing patents were 4/4 for all special pardons [not newgate or circuit] [c66/2700#2]; 6 clerks appt notes fee for any enrolling as 20/ per skin, but considerably less for an alienation or outlawrie [3/4] [c66/2706#1]; gourdon pardon is roughly consistent. NB DOES THIS REALLY MEAN THAT ENROLLING IS THAT MUCH MORE DEAR THAN JUST SEALING?

⁹⁴ Hanper accts are uniformly kept or survive thru the period, but some examples: 1610-11: about 181li for about 200 pardons; 1611-12: 212li; 1612-13 199li; 1613-4, 185li-special pardons noted at 16/4 with some indiv exceptions, but none at more than 6li and only a handful at that [e315/1645-48]. HAVE I GOT NO OTHER HANAPER LISTS FOR LATER? # would vary tremendously if, for example a general pardon was on offer.

⁹⁵ M-L, 338 king cld only even remit what was owed him-only the chancellor or treasurer could do the rest of the fees; 160 stat 1536 assures fees on immedi warts; 162-3 1613 complaint to james that too many were hurting business; 162 chas note in 1642; englishing complaint comes from Aylmer, state servts, p104. see also 284-5 in same re leveler view that eliminating legal officers would make law cheaper. stowe 497 suggests 1650s fees were no lower for pardons. Chamberlan 1623, ii, 502 notes death of one of the signet clerks, Levinus Muncke who died 'very rich' for one, w/ an estate close to 40,000li.

⁹⁶ lismore, ser 1,v, p.189; see also bl eger ms 784p68 [1500 for homicide, 1623], Strafford, ii, 140 [Jermyn, 500, 1637]; clar sp, 1, 158-9 [500, 1634, branding]. And see DNB texts for Ri Reeve [1665], Wm Wroth[?], Wm Burton [1666], Jo Hodgson; egeron /237 on pirate

⁹⁷ Gourdon pardon and charters in M-L, 94-6 are best cases here-worth an appendix?

⁹⁸ Aubrey, 162 via Alan Boyer's ODNB. Boyer thinks the claim may be exaggerated. Coke was atty-gen at the time, but the profit seems to have been private; see also bl add 34362 poem accusing among other things, hyde of selling pardons

⁹⁹ Sometimes this seems to have been the price of procurement; sometimes it was a relatively harmless grant for the king because the property had been concealed.

¹⁰⁰ Get facts/ref

¹⁰¹ fsl mss g.b.10/102v [winwood papers]

¹⁰² lives of the norths, 284ff; need summary?

¹⁰³ Gov, p73

¹⁰⁴ DISCUSS DISTINCTION BETW COMPASSION AND PITY?

¹⁰⁵ pp80-81; see also p85-7; also cotton

¹⁰⁶ God and king, 1633, p4

¹⁰⁷ Bk6,56, laws

¹⁰⁸ Bacon, History, 213; elegy is at BL Egerton 2982/149; Clarendon selections, p316.

¹⁰⁹ Weiser, access, pp. 19 for quote and ff-both the kings accessibility and then inaccessibility were put down to self-indulgence; GET PRIMARY QUOTES AS WELL

¹¹⁰ Scot, 'Solomons puritan', p. 2-3 [1616]; anon on dueling, HEH EL 7976; also the prince ch 19.

¹¹¹ Be sure I'm right that while JC is the sacrifice, Mary is the intercessor; find refs to use of Ester. And are there others?

¹¹² Examples from pardon-1: 1622 homicide [mother], 1634-5, 1638 coventry notes several fee remissions pleaded by wives for piracy, burglary, flight; 1662, fiancé, killing; 1670, wife, theft; 1674 wives of seamen; 1675, wife, failed clergy for homicide. Grace notes add 1675, wife, theft plea that failed; Lady Cranfield and Lady Bristol

¹¹³ Difficulty here is that there are fewer than I thought-pardon file notes none via keywords; grace via same only the cases of Katherine of Aragon below, and in news files, 1619 Ri Taverner, 1620s John Clavell, 1632 Swalepox[sp?] HOW CAN I BETTER TAP INTO THIS? Any sense of whether people used PhilipII this way as well? Mrs OC? And any sense here of money changing hands?

¹¹⁴ Specifics, but does this demand a sidebar about Elizabeth's rep?

¹¹⁵ how well known is the story in the 1600s?

¹¹⁶ NB popular statute by Rodin and its ubiquity

¹¹⁷ Hochons arrow

¹¹⁸ Wilbraham in ashton, but does this match pardon numbers? And, nb, a desire for popularity is not the same as passionate tenderness

¹¹⁹ find BD ref here

¹²⁰ quote from sermon by Sydenham, 1634, p78

¹²¹ Cited by Erasmus, 187 in born edition